

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)

MEMORANDUM DECISION

NUMBER 25-5982 (a16641))

Change Application Number 25-5982 (a16641), in the name of Benson Culinary Water Improvement District, Howard Johnson, Cardon Family Trust, M. Nick and GERALYN J. Galloway, Paul F. Cardon, was filed on March 13, 1992, to change the point of diversion, place of use and nature of use of 100 acre-feet or 0.47 cfs of water. Heretofore, the water has been diverted from an unnamed drain located: (1) North 1610 feet and East 20 feet; (2) North 2015 feet and East 20 feet, (3) North 2235 feet and East 20 feet, (4) North 2460 feet and East 20 feet, (5) North 2060 feet and East 1440 feet; all from the $S\frac{1}{4}$ Corner of Section 10, T12N, R1W, SLB&M, and used for the irrigation of 43.77 acres but limited to the sole supply of 25.0 acres in the $S\frac{1}{2}NE\frac{1}{4}, N\frac{1}{2}SE\frac{1}{4}$ of Section 10, T12N, R1W, SLB&M.

Hereafter, it is proposed to divert 60.0 acre-feet of water from a 12 inch well, 200 feet to 300 feet deep, at a point located South 59 feet and West 2486 feet from the $E\frac{1}{4}$ Corner of Section 32, T13N, R1E, SLB&M, to be used for municipal purposes in the Benson Culinary Water Improvement District. Forty acre-feet will be diverted and used the same as heretofore for irrigation but limited to the sole irrigation supply of 10.0 acres.

The change application was advertised in The Herald Journal from April 16, 1992, to April 30, 1992, and was not protested. Late protests, however, were filed by Carolee McMullin and several users in the Hopkins Slough and other surrounding areas.

The State Engineer has held the application during the past several weeks while letters of concern and late protests have been filed regarding potential interference with other water sources which may result in impairment of rights.

The State Engineer believes the application can be approved without impairing the rights of others if certain conditions are imposed.

Although the late protests have no statutory rights for reconsideration or appeal of the State Engineer's decision in this matter, the State Engineer wants to inform as many of these concerned citizens as possible of the decision.

It is, therefore, **ORDERED** and Change Application Number 25-5982 (a16641) is hereby **APPROVED** subject to prior rights and the following conditions:

1. The applicants are required to meter the volume of water taken for municipal purposes from the well at the new point of diversion.
2. The well will be regulated under the direction of the Summit Creek distribution system and assessed an appropriate fee for distribution by the system.
3. The volume of water taken from the well in the calendar year will be verified by the Summit Creek distribution system's water commissioner and reported in the yearly commissioner's report.

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4. The applicants are limited to divert 60.0 acre-feet of water under this change application for municipal purposes from the well point of diversion.
5. Forty acre-feet of the 100 acre-feet included in the heretofore of this application is to be diverted and used for irrigation purposes as has historically been done. None of this 40 acre-feet designated for irrigation is to be taken from the well, but will continue to be diverted from the historic points of diversion and will be limited to the irrigation of 10 acres of land and a maximum diversion of 40 acre-feet.

This Decision is subject to the provisions of Rule R655-6-17 (1992 Utah Administrative Code--formerly R625) of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 28th day of August, 1992.


Robert L. Morgan, P.E., State Engineer

RLM:RMF:jb

Mailed a copy of the foregoing Memorandum Decision this 28th day of August, 1992, to:

Benson Culinary Water Improvement District
4411 West 3000 North
Benson, UT 84335

Howard Johnson
3718 West 3000 North
Benson, UT 84335

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Cardon Family Trust
Wayne R. and Sharlene F. Cardon, Trustees
3046 North 4000 West
Benson, UT 84335

M. Nick and Geralyn J. Galloway
4411 West 3000 North
Benson, UT 84335

Paul F. Cardon
c/o Howard Johnson
3718 West 3000 North
Benson, UT 84335

Riverside Culinary Water Company
ATTN Robert Parson
5400 North 2297 West
Benson UT 84335

Hopkins Slough Water Share Holders
ATTN Carolee McMullin et al
1350 West 5000 North
Smithfield UT 84335

Don Corey and Carolee McMullin
1350 West 5000 North
Smithfield UT 84335

Walkaria F Goncales
River Commissioner
188 West 600 North #B
Logan UT 84321

Jeff Gittins
350 North 300 West
Smithfield UT 84335

Clyde, Pratt and Snow
ATTN Brent Rose
One Utah Center Suite 1000
201 South Main Street
Salt Lake City UT 84111-2208

Robert Toolson
356 South Main
Smithfield, UT 84335

Errol and Julie Hoopes
980 West 5400 North
Smithfield UT 84335

Bruce Pitcher

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690 South Main
Smithfield UT 84335

R Clair and Kathleen E Merrill
905 West 600 South
Smithfield UT 84335

David and Pat Kimball
332 West 100 North
Smithfield UT 84335

Thomas H Gibbons
4680 North 800 West
Smithfield UT 84335

Donn and Thelma Thornley
607 South Main
Smithfield UT 84335

Jon Meikle
4650 North 1000 East
Hyde Park UT 84318

Ralph Meikle
4610 North 1000 East
Smithfield UT 84335

George R Weeks
195 East 300 South
Smithfield UT 84335

BY: Judy Barbour
Judy Barbour, Secretary